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COURT OF CRIMINAL APPEALS  
5/15/2018  
DEANA WILLIAMSON, CLERK

May 14, 2018

Office of the Clerk  
Court of Criminal Appeals  
P.O. Box 12308  
Capital Station  
Austin, Texas 78711  
ATTN: Deana Williamson

**RE: *Keithrick Thomas v. State of Texas*, PD-0790-17**

Dear Ms. Williamson:

Please file this pre-submission letter of authority that contains 486 words in this matter that is being argued on May 16, 2018, and a copy of which is today being served on opposing counsel via e-filing.

*State v. Bridges*, 963 S.W.2d 487, 494-96 (Tenn. 1997). After feeling a small object “in the shape of a pill bottle” in defendant’s jacket pocket, the officer seized it because he recognized it as “the kind that a lot of crack dealers will use to keep their crack in.” While the trial court and court of appeals upheld the search under the plain feel exception, the Tennessee Supreme Court reversed, noting, “Courts should not surrender their common sense assessment of the sensory capacities of human touch to an officer’s assertion that he or she ‘immediately knew’ the nature of the object being touched.” The court went on to hold that:

While Officer Blackwell said that he “immediately recognized” the item as a pill bottle, unless he was clairvoyant, he could not have discerned the contents from merely touching the container. Such a bottle, or one resembling it by touch, may enclose legal medication, candy, pins, film or any number of small items. [His]

testimony does not specify the objective basis upon which he relied for identification of the container itself or its possible contents as contraband. The record contains little evidence of [his] experience in drug cases and no evidence as to how he connected the container with the possession of cocaine.

*Crawford v. State*, 980 So.2d 521, 522 (Fla. Dist. Ct. Appls. 2007). After he felt a cylindrical tube in the defendant's pants pocket that he immediately recognized as an M & M candy container, the officer seized it, opened it, and found crack cocaine. Although the officer testified that he had 16 years' experience, ten as a narcotics investigator, and made over 100 arrests where crack cocaine was found in cylindrical candy containers, the court of appeals held that the officer's trained instinct and belief based on his experience that the container could contain drugs – especially in the context of a traffic stop – fell short of probable cause for the seizure.

*Ex parte Warren*, 783 So.2d 86, 94 (Ala. 2000). The officer testified that based on his experience, he believed a box of Tic Tacs he felt in the defendant's pants pocket during a frisk contained narcotics because he “ran across the same type of plastic containers in the past that have come off [sic] defendants that did, in fact, hold cocaine.” The court held that the officer's conclusory claim that he had made cases where drugs were found in plastic containers did not provide him probable cause to immediately associate the container with contraband or criminal activity.

Sincerely yours,

/s/ Brian W. Wice

**BRIAN W. WICE**

BWW:dje  
Encs.

cc: Clint Morgan  
Stacey Soule